

**BOARD OF OPTOMETRY
BOARD MEETING
APRIL 21, 2009**

TIME AND PLACE: The meeting was called to order at 9:10 a.m. on Tuesday, April 21, 2009 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 4, Henrico, VA.

PRESIDING OFFICER: David H. Hettler, O.D, President

MEMBERS PRESENT: Paula H. Boone, O.D.
Gregory P. Jellenek, O.D.
Jonathan R. Noble, O.D.
W. Ernest Schlabach, O.D.
Jacquelyn S. Thomas, Citizen Member

STAFF PRESENT: Eric A. Gregory, Assistant Attorney General, Board Counsel
Elizabeth A. Carter, Ph.D., Executive Director for the Board
Emily Wingfield, Chief Deputy Director
Elaine Yeatts, Senior Regulatory Analyst
Terri Behr, Operations Manager

OTHERS PRESENT: Meade A. Spotts, Esquire, VOA
Bruce Keeney, VOA
Bo Keeney, VOA
Cal Whitehead, VSO
Edward Mullen, NAOO

QUORUM: With six members of the Board present, a quorum was established.

AGENDA: Dr. Hettler indicated that he would be addressing the Joint Board Certification Project Team as part of the President's Report.

PUBLIC COMMENT: Meade Spotts, Esquire, representing the Virginia Optometric Association, presented public comment regarding commercial practice complaints. His written comment is incorporated into the minutes as Attachment 1.

APPROVAL OF MINUTES: On properly seconded motion by Dr. Jellenek, the Board voted unanimously to approve the minutes of the January 29, 2009 meeting as amended.

**DEPARTMENT DIRECTOR'S
REPORT:**

On Ms. Ryals behalf, Dr. Carter apprised the Board that the third quarter FY2009 statistics were not yet published but that she could advise that the Board had been remaining well-abreast of its disciplinary caseload and that they would be provided the quarterly results as soon as they were available.

**DHP LEGISLATIVE/REGULATORY
UPDATE:**

Regulatory Update

Ms. Yeatts informed the Board of SB1282 enacted by the General Assembly that requires that the Board allow a person to give a second address to be used for public record. Further, that the Board approve the amendment.

On properly seconded motion by Dr. Jellenek, the Board voted unanimously to approve the amendment as enacted.

Ms. Yeatts updated the Board on its two proposed regulatory actions: 18VAC 105-20-70 CE Regulations and 18VAC 105-20-40 and 45 Standards of Practice.

COMMITTEE REPORTS:

Credentials Committee

Dr. Boone reported that three applications had been approved through the Credentials Committee since the Board's last meeting in January.

Continuing Education Committee

Dr. Carter reported that a CE random audit had been conducted based upon a statistical formula instead of a flat rate. The percentage of licensees audited was 6.8% for a total of 71 with seven (7) found to be non-compliant.

Dr. Schlabach informed the Board any licensee who signs up for the services of OE Tracker will be charged \$20.00 per year. He inquired as to whether the fees for Virginia licensees could be paid by the Board. Dr. Carter and Ms. Yeatts responded that revisions or additions to fees would require a regulatory change.

Dr. Schlabach requested that the Board consider accepting the OE Tracker CE printouts as proof of continuing education in place of individual CE certificates.

On properly seconded motion by Dr. Noble, the Board voted unanimously to accept OE Tracker CE printouts as proof of CE.

DISCUSSION ITEMS:

Development of Proposed Bylaws

Dr. Carter informed the Board that it had operated under “Roberts Rules of Order” rather than formal bylaws. She reported that the other boards within the Department had developed bylaws, some, such as the Board of Medicine of longstanding, while others such as the Board of Veterinary Medicine only recently. The various boards' bylaws were provided to the Board for reference. Dr. Carter indicated that they may want to consider starting with a simple framework, mirrored in those bylaws more recently developed. However, the choice would be up to the Board.

On properly seconded motion by Dr. Schlabach, the Board voted unanimously that the Legislative Regulatory Review Committee develop a draft of the bylaws. Additionally, that staff provide a very rough draft of the bylaws for review by the Committee.

Professional Designation Regulations

The item was moved to new business for discussion in closed session with Board Counsel. Dr. Hettler requested that staff identify any problems and complaints and present to Board.

CE Audit Language in Confidential Consent Agreements

To alleviate the burden of tracking, staff requested that the board consider revising the CE audit language to past years rather than future years.

On properly seconded motion by Dr. Boone, the Board voted unanimously that the CE audit language in CCA's should be specific and for three (3) years in the future.

PRESIDENT'S REPORT:

Board Certification

Dr. Hettler apprised the Board of the activities of the Joint Board Certification Project Team. Comprised of members from the Association of Regulatory Boards of Optometry, American Academy of Optometry, American Optometric Association, Association of Schools and Colleges of Optometry, National Board of Examiners in Optometry and the American Optometric Student Association, the Team is proposing a model framework for board certification in optometry through a newly developed organization, the American Board of Optometry. This certification would be apart from state board licensure. The proposal is still a work-in-progress, with the most recent addition provisions for a *board eligible* status.

On properly seconded motion by Dr. Jellenek, the Board voted to reserve judgment pending further development and potential modifications.

Dr. Hettler shared his heartfelt appreciation to Dr. Boone for her eight years of service to the Board of Optometry.

EXECUTIVE DIRECTOR'S REPORT:

Budget and Statistics

Dr. Carter informed the Board that the Board remained well within its budget and currently had a cash balance of approximately \$233,000.

The Board is doing very well with Virginia Performs. The current open caseload is relatively light, with 32 open cases. The majority pertain to continuing education and business practice issues.

Dr. Schlabach requested a report on the compliance with existing Orders. Staff will present a report on this topic at the next scheduled full Board meeting.

Board of Health Profession Report

Dr. Carter apprised the Board on the status of the sunrise studies being conducted by the Board of Health Professions. She indicated that criticality rating by the Board of Medicine's and Board of Physical Therapy's representative on the degree of harm posed by unregulated orthotists and prosthetists has been done and will be presented to the Regulatory Research Committee on May 12, 2009. Additionally, staff reports on the research into medical interpreters and polysomnographers have been finalized and also will be presented to the Committee in May. She also indicated that a review into the need to regulate surgical assistants and surgical technologists has begun.

NEW BUSINESS:

On a properly seconded motion by Dr. Jellenek, the Board went into closed session, pursuant to §2.2-3711A.7 of the *Code of Virginia*, to consult with legal counsel pertaining to the provision of legal advice on specific legal matters concerning commercial/mercantile practice and professional designations. Assistant Attorney General Eric Gregory, board counsel, attended the closed session to provide such consultation and Dr. Carter and Ms. Behr also attended as their presence was deemed necessary and their presence was to aid the Board in its consideration of the matter, pursuant to § 2.2-3712F.

On properly seconded motion by Dr. Jellenek, open session was resumed, pursuant to § 2.2-3712D. A roll call vote was taken, all board members unanimously certifying that to the best of their knowledge, only public business matters lawfully exempted from open meeting requirements under this chapter and only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting of this public body.

ADJOURNMENT:

The Board concluded its meeting at 11:20 a.m.

David H. Hettler, O.D.
President

Elizabeth A. Carter, Ph.D.
Executive Director